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9 March 2010

Via E-Mail and U.S. Mail

Ms. Anita L. Davis  
Superfund Enforcement and Information  
Management Branch  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

Re: General Notice/Demand for Payment  
Westfork Drum Dump Site – Site ID: A4QB  
Lithia Springs, Georgia

Dear Ms. Davis:

This firm has been retained by D&C Westfork LLC (“Westfork”) in connection with EPA’s demand for payment of response costs for the removal of several drums from property located at or near 242 Westfork Court, Lithia Springs, Douglas County, Georgia (“the Site”).

As I mentioned in my prior telephone call, my client purchased property that includes the Site in 2002. Prior to purchase, Westfork conducted a standard ASTM 1527-00 “Phase I” assessment. That assessment revealed the presence of two 55-gallon drums, both of which were unlabeled. One of the two drums was empty and one appeared full, and there was no evidence of any release from either drum. Both drums were removed from the site by Environmental Quality Industrial Services of Atlanta, and the then-current owner made arrangements for proper disposal of the full drum. During the Phase I, no indications of stressed vegetation, surficial soil staining, surface impoundments, or unusual odors were observed. The Phase I concluded that no “recognized environmental conditions” were found in association with the Site.

After purchasing the property, Westfork installed a gate at the end of the cul de sac in order to keep people from dumping any trash in the lower flood plain area. Westfork or its agents monitored the gate every so often when clearing the site of vegetation and was not aware of any drums. Approximately 3 months after the installation of the gate, Douglas County Water & Sewer replaced the lock with their lock so they were the only ones with a keyed access to the property after that time. The gate remained locked during the period Westfork owned the



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Ms. Anita L. Davis  
9 March 2010  
Page 2

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property. So far as we know, gate was intact, with a Douglas County lock on it, when Westfork sold the Site in July 2007. When the site was sold, the prospective purchaser at that time performed another Phase I environmental site assessment. No drums, containers, soil staining, distressed vegetation, or odors were observed at that time.

For these reasons, it appears to us that Westfork is not a liable party under CERCLA, 42 U.S.C. § 9601 *et seq.* Among other available defenses, it appears that any releases to which EPA responded were caused solely by the acts of third parties, that Westfork exercised due care with respect to hazardous substances in light of the relevant facts and circumstances, and that Westfork took precautions against foreseeable acts by such third parties and the consequences that could foreseeably result from such acts. Accordingly, no liability attaches to Westfork under 42 U.S.C. § 9607(a).

I have reviewed the materials you sent to me (specifically the Pollution Reports dated June 11 and August 30, 2007. Nothing in those materials would seem to compel a different conclusion. Nevertheless, if you believe we are overlooking some important facts indicating that the third-party defense is not available in this matter, we would appreciate receiving that information. Absent such information, however, it appears that Westfork is not a liable party and therefore Westfork respectfully declines to reimburse EPA for its response costs as demanded in your letter of February 11, 2010.

Please do not hesitate to contact the undersigned if you have any questions or require any further information.

Sincerely,



Edward A. Kazmarek

Cc: D&C Westfork LLC